

HCS HB 1337 -- RETAINAGE IN BUILDING CONTRACTS

Drafting Number: 3503L.01C

SPONSOR or CO-SPONSORS: Green (73), St. Onge

Chairman (for HCS): George

Handler:

COMMITTEE ACTION: Voted "do pass"

by the Committee on Labor by a vote of 13 to 2

Use Introduced Summary Verbatim:

Modify above as follows:

New summary as follows:

This bill creates several requirements and restrictions involving "retainage," the practice of withholding a percentage of the payment for a construction project, pending satisfactory completion of the project. The bill limits retainage to 5% of the contract. The contractor may give the owner a substitute security and demand payment of the retainage. Subcontractors may do the same with contractors. The bill sets forth the types of securities that will satisfy the requirement, including certificates of deposit, retainage bonds, and unconditional letters of credit. Contractors are entitled to any income earned from the securities while deposited with the owner. Contractors may not withhold extra retainage from a subcontractor, unless the subcontractor's performance is not in accordance with the terms of the subcontract. Contractors must pass along to any subcontractors the retainage they are paid on a pro rata basis.

Subcontractors may be released prior to completion of the entire project, and contractors may request an adjustment in retainage necessary to pay these subcontractors in full. Within 30 days of the substantial completion of the project, all retainage or substitute security must be released by the owner to the contractor, less 150% of the costs to complete any remaining items. Upon receipt of this retainage, contractors must release subcontractors' share of the retainage within 7 days.

Construction contracts will be unenforceable to the extent that they are inconsistent with the requirements of the bill. Courts may award 18% interest on improperly withheld retainage and may award attorney's fees in actions to enforce the bill. Contracts for the construction of residential buildings with 4 or fewer units are exempt from the bill.

Emergency Clause:      or Effective Date of:

HCA(s) --

FISCAL NOTE:      Attached:      Not available:

PROPOSERS: Supporters say that the tradition of 105 retainage has been abused, contractors or subcontractors must wait until after the completion of the entire project, and contractors must still pay taxes on money that is retained. The bill will save money on construction projects and allow contractors to put more money into their businesses.

Testifying for the bill were Representative St. Onge, Bi-State Utilities Co., SITE Improvement Association, St. Louis Area Contractors Association, American Subcontractors Association, American Steel Fabrication, Inc., Mechanical Construction Association of Eastern Missouri, Associated General Contractors of Missouri, Builders Association of Missouri, Carpenters' District Council of Kansas City and St. Louis, Missouri AFL-CIO, Daniel Caldwell, and Raymond C. Daub.

OPPOSERS: Those who oppose the bill say that the bill is an impairment of private contracts,

5% is not enough retainage for security, 150% is not enough to retain for uncompleted work, alternative securities are a concern, and there are existing remedies for nonpayment. The bill will increase costs and time to completion because of inspections, increase the costs of lending on construction, and young, untested firms will get fewer contracts.

Testifying against the bill were Anheuser-Busch, Associated Industries of Missouri, St. Louis Council of Construction Consumers, Association of Realtors, and the Missouri Growth Association.

Analyst: Mark Pioli